THE HON'BLE SRI JUSTICE B. PRAKASH RAO

AND

THE HON'BLE SRI JUSTICE R. SUBHASH REDDY

WRIT APPEAL No.2345 of 2005

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JUDGMENT: (Per BPR,J)

Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents. At their request the main appeal is taken up for disposal at the admission stage.

The appellants herein are the Management and the respondents in the writ petition. The respondent herein assailed the orders, dated 24.08.2005, transferring him to the Branch Office, Bhopal, Madhya Pradesh from Hyderabad.

The learned Single Judge having not agreed with the contentions urged on behalf of the respondent/writ petitioner in making challenge to the said orders, upheld the same. However, directed the appellants to grant extraordinary leave without loss of pay once in a month, in such a way that it can be prefixed or suffixed to Saturday and Sunday as desired by the petitioner and this facility shall be extended to him till the end of April 2006. Aggrieved by the same, the present appeal has been filed by the management.

Having regard to the facts and circumstances of the case, it has to be seen that the appellants/respondents seek to assail the orders of this Court. It is now well settled that the transfer is incidental to the conditions of service and the main grievance urged on behalf of the writ petitioner is that his children are studying and therefore he should be retained till the end of the academic year and now it is pointed out that

subsequent to the disposal of the writ petition, the application filed by the respondent/writ petitioner seeking to retain him, was rejected as per the orders dated 13.09.2005. However, the same is not yet challenged by the respondent/writ petitioner since the appellants has passed fresh orders subsequent to the disposal of the writ petition, which serves no purpose and it is for the respondent/writ petitioner to assail the same by way of separate proceedings. In view of the same, the question of granting extraordinary leave as directed by the learned Single Judge needs interference of this Court.

In the circumstances, the writ appeal is allowed and the direction given to grant extraordinary leave without loss of pay is set aside with liberty to the respondent/writ petitioner to make a challenge afresh by separate proceedings. It is also open for the appellants to consider any leave application filed by the writ petitioner, if it so warrants, un-influenced by any of the observations made in this proceedings.

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B. PRAKASH RAO, J

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R. SUBHASH REDDY, J

Date: 01.12.2005

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